

ORIGINAL

(S E R V E D)
(July 10, 2006)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

July 10, 2006

INFORMAL DOCKET NO. 1869(F)

PATRICIA EYES

v.

WALLENIOUS WILHELMSSEN LINES

REPARATIONS DENIED

This case is before me on a complaint filed on September 30, 2005 under the informal procedures described in Subpart S of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§502.301-502.305. The respondent did not consent to the use of these procedures and the case has been adjudicated under the procedures for adjudication in Subpart T, 46 C.F.R. §§502.311-502.321. The respondent submitted evidence and argument in response to the complaint on January 17, 2006.

BACKGROUND

The claimant, Ms. Patricia Eyes, contracted with the respondent, Wallenius Wilhelmsen Lines (WWL), for shipment of a motor home from the United States to the United Kingdom. The vehicle was loaded onboard a vessel in Long Beach, California in June, 2004. Before the Atlantic crossing the vessel made a stop in Norfolk, Virginia. On July 17, 2004, during this port call, a truck towing other cargo rolled down an access ramp, severely damaging the motor home.

After arrival in the United Kingdom the damage was inspected. The certificate of survey dated August 4, 2004 documented the extensive damage and offered the opinion that the motor home should be treated as a constructive loss.

The insurer paid the complainant for the destruction of the motor home. Under paragraph 10 of the Bill of Lading the respondent's liability was limited to \$500.00 for a customary freight unit (a term that includes an unpackaged vehicle). WWL paid \$500.00 to the complainant's insurer in satisfaction of the insurer's subrogation claim.

There are, broadly, two categories of reimbursement claimed in the complaint. The first is loss of use of the vehicle because of the physical damage that made it unusable. The second relates to a variety of expenses that resulted from the fact that it was shipped to the United Kingdom after being damaged in Norfolk.

LOSS OF USE BECAUSE OF PHYSICAL DAMAGE

The first category, loss of use of the vehicle, is the largest dollar amount of the claim. The complainant has supported the claim by providing evidence of the cost of renting a similar vehicle in the United Kingdom for the time periods that it was anticipated to be used.

The complaint notes that the survey report criticized the parking of an item of personal property at the bottom of the access ramp. This point has merit. In the crowded conditions onboard a cargo ship there is always a chance of collision or other damage to a vehicle, particularly during loading and unloading. In a high traffic area like a ramp the risk is greater. It is inevitable in the process of loading a large modern vessel that some items will be stowed in more exposed positions than others. Given that inevitable fact of seagoing life, it would be preferable to put fungible commercial cargo rather than someone's personal property in the places where there is greater risk of an accident like this. However, even if it is accepted, as the complaint contends, that parking the vehicle at the base of the ramp was negligent, the insurance settlement would bar recovery of the claim for loss of use.

Ownership of property involves the right to do with it, in general, as one wishes. It can be used, stored for later use, rented to another for temporary use, or sold to another, at which point the new owner acquires the same rights over it. When personal property is destroyed the owner loses the ability to use it for its intended purpose. If the property is insured and either completely destroyed or (as in this case) damaged beyond economical repair the insurer pays the owner for the loss. The loss of use, no less than the loss of its potential resale value, is part of what casualty insurance compensates the owner for.

In this case the insurance company paid for the loss of the vehicle in accordance with the insurance policy and the respondent paid the portion of the loss called for in the bill of lading. Furthermore, the claim for loss of use is based on the physical damage to the vehicle and under the Carriage of Goods by Sea Act, 46 U.S.C. §1300, jurisdiction over such claims lies with the federal District Courts, rather than with the Commission.

COSTS RESULTING FROM THE TRANSPORTATION OF THE DAMAGED VEHICLE

The second category of loss asserted in the claim represents costs incurred after the damaged vehicle arrived in the United Kingdom, including storage, British customs inspection, and attorney fees, as well as the freight charge itself. What the complainant intended to obtain as a result of the shipment was a functional motor home available for use in the United Kingdom. This desire was frustrated before the ship had left U.S. territory.

As a matter of causation this category of claim is logically separate from the claim for loss of use resulting from the physical damage. When the physical damage was complete so was the property loss for which the insurer would ultimately pay reimbursement. The act of transporting what was now valueless property caused further expense, which the complainant has documented. If the vehicle had been offloaded in Norfolk there would have been no British customs fees, no British storage costs, and no need to retain a British solicitor. The insurance claim for the damage could have been handled as a domestic, rather than an international matter, more conveniently and more cheaply.

DISCUSSION

The photographs taken after the collision make it clear that the motor home suffered extensive damage. However, it was not known for certain that it had been damaged beyond economical repair until the survey was conducted in the United Kingdom. The ship's crew and stevedore personnel on the scene were not trained in conducting a survey of the damage. Based on the information available to them while the ship was in the process of loading it might have been possible to repair the damage.

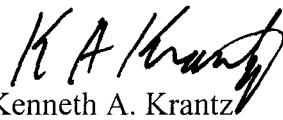
If the crew on the scene had decided to unload the damaged vehicle in Norfolk, and if repairs were possible, the complainant would have had a very reasonable grievance against the respondent for failing to fulfill its duty under the bill of lading to transport the vehicle to England. The complainant would have to deal with the issues of survey and potential repair not in California where she lived, or in England, the intended destination, but in Virginia. If and when repairs were completed the vehicle would need to be booked for an entirely new passage to position it for the use that was desired for it.

In addition to exposing the carrier to potential liability, unloading the vehicle in Norfolk would also have required moving and then re-stowing all of the cargo that stood between it and the exit from the vessel. This adjustment would have affected both the loading of the ship and its sailing schedule.

Section 10(d)(1) of the Shipping Act, 46 U.S.C. App. § 1709(d)(1) prohibits common carriers from "fail[ing] to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property." In order to

violate the Act and give rise to an award of reparations, a regulation or practice must be unjust or unreasonable.

In this case the respondent's personnel on the scene had a choice between two courses of action, and did not have the information necessary to make a fully informed choice between them. Either course would, if it turned out to be wrong, expose the complainant to expense and inconvenience, and the respondent to a claim. Given that choice between two bad options, they chose the one that would least disrupt the operations of the vessel. Under the circumstances this choice was not an unreasonable one, and there is no basis under the Shipping Act for the Commission to make an award of reparations.

A handwritten signature in black ink, appearing to read "K A Krantz".

Kenneth A. Krantz
Administrative Law Judge